

D R A F T

MINUTES

Legislative Study Commission on Public-Private Partnerships January 25, 2011, at 9:30 a.m. Room 1024/1128, Legislative Building Co-Chairman Deborah Ross, presiding

Chairman Clark Jenkins called to order the fourth meeting of the Joint Legislative Commission on Public-Private Partnerships at 9:30 a.m. on Tuesday, January 25, 2011. The following members of the Commission were present: Representative Deborah Ross, Co-Chair; Representative Larry Bell; Representative Becky Carney; Representative Bill McGee; Representative Joe Tolson; Ms. Angela Carmon; Mr. James N. Copeland; Mr. William J. Klein; Ms. Mary Nash Rusher; Ms. Gloria Shealey; and Mr. Richard E. Vick. A copy of the agenda and a roster of visitors to the meeting are available in the 1-25-2011 folder at the Commission's website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

The chair introduced the assistant sergeants-at-arms serving the Commission from both the House and Senate and then called for a motion to approve the minutes from the January 13th meeting. Upon a motion by Representative McGee, seconded by Representative Carney, the minutes were unanimously approved. (The 1-13-11 minutes can be found in the 1-25-2011 folder at: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>).

Chairman Jenkins opened the discussion of the legislation on Capital Leases of School Buildings, set to sunset on July 1, 2011. The question was whether the sunset should be extended and if so, whether changes should be made to the statute.

Ms. Rusher said some of the difficulties with the statute continue to be the same as the debate within the Commission, which are: What's our goal? What should the goal of any public-private statute be? Is it a financing mechanism or is it a delivery mechanism? She said she had the sense that this statute might need a much broader re-write if it were to be made an entirely different delivery structure. But if the Commission is trying, at a minimum, to provide some more flexibility to school systems, they should **at a minimum** add operating leases to the provisions and extend the sunset.

Ms. Kathy Bullock, who was present in the audience from the NC Zoo Society, said they had long been interested in how they can further support the zoo beyond just the normal fund raising they do for capital. After running numbers based on the current economy, they believe a public-private partnership non-profit can actually operate some of the zoo's revenue-producing functions through retail stores and marketing and bring in a higher level of revenue at a cost savings to the state.

Representative Carney said that was a good point about public-private partnerships in general, but she thought they were talking just about schools.

Representative Ross said since the school construction law is about to sunset, the first question was whether the General Assembly should re-authorize the statute and then whether it should be amended as Ms. Rusher suggested to add financing options as well as design/build.

Representative Tolson asked how often this process had been used, and the answer was zero although it had been tried.

Representative Carney said she thought it had not been promoted enough. She thought the law should be extended so as school systems move forward with their budgets they will have the tool available.

Mr. Klein said that statute is the only current, defined process that is easily used rather than some roundabout method available in existing laws. He thought it could still provide an advantage to remain in the statutes with modifications. He said the economy is different than it was when the statute was passed, and people were not necessarily focused on it.

Representative McGee said he was disappointed that no good business model came from the statute, but he thought it could be changed legislatively and kept on the books at least through the next legislative session.

Representative Tolson asked Mr. Matthews, who was present in the audience, whether this was a tool that should be kept.

Mr. Matthews, Director of Public Support, Department of Public Instruction, said yes. He said they needed to find some avenues to help with school construction.

Chairman Jenkins said he and Co-Chairman Ross thought the Commission should recommend to the new leadership and to the General Assembly that this Commission continue. Given the financial situation in the state, he thought they should offer anything they could to any branch of government to “keep the lights on.” He hoped that the motion would allow some sort of language to allow studying whether there are other branches of government that should be included in the statute and not simply limit it to education.

Representative Ross moved that the sunset be extended on the legislation, that the recommendation from Mary Nash Rusher concerning operating leases be included in the legislation introduced, and that the Commission investigate whether or not this kind of legislation might be helpful in other areas. The motion was seconded by Representative Tolson, and it passed unanimously.

The next item on the agenda was discussion of Senate Bill 822, which Senator Jenkins introduced during the 2009-10 Session. **The questions were what criteria should be included, and should there be any other changes?** Senator Jenkins said he took no pride in authorship of the bill; he simply introduced it as a starting point for discussion. He said it would have to be re-introduced, and it was open for whatever was the feeling of the Commission.

Mr. Vick said he wanted to restate that North Carolina firms should have the opportunity to participate without being put at a disadvantage, that it should be an open and fair process, and unsolicited bids should not be allowed.

Ms. Rusher said to be clear, this is a bill designed to be a design/build, procurement statute to allow a more streamlined building process in the public sector. She said with some tweaks it could become more of a financing statute. She said the public is very concerned with two aspects of a bill like this. One, is that it is really design/build, and two that it permits the private sector to initiate the process rather than the public sector initiating the process, which is seen as another way of excluding small contractors.

Senator Jenkins asked how the bill could be fixed to become just another resource for education. Do you roll certain facets of Senate Bill 822 into the legislation just discussed? He said he knew there were nightmares in some adjoining states where the private people went in and sort of forced the building of a school on a school system with no one in the neighborhood even getting a chance to look at it.

Mr. Copeland said this model from Virginia is not for everybody, but it is an arrow in the quiver that allows public entities to follow this process that has been successful. He said his firm has been a part of many of those successes. He said a lot of the concerns expressed here are the same concerns that were expressed in Virginia back when the bill was written. As the process has unfolded a lot of those concerns have not materialized. He said there are parts of the bill that have merit, and there are components that could be integrated into the other bill, if necessary. He said he would like to see something that is not specifically for schools but is something that schools and other public entities can use combined. He said even in Virginia, the Educational Act is open enough that other entities can use it.

Chairman Jenkins said he would concur with that.

Mr. Copeland said he has heard from his construction friends that there are major concerns with the unsolicited component of the Virginia bill, which he agreed could be extracted to make a better bill.

Ms. Shealey said her concern was maintaining some clarity about the two pieces of legislation because design/build was a procurement tool and the other bill is a finance tool. She said she was not sure you could mix the two.

Chairman Jenkins said the ultimate goal is for the State of North Carolina to have something built, and you have to have different components to get it built. He said it was his opinion that all of that information should be in one book. He said he would not do anything that would push out our North Carolina contractors, but there were going to be more and more PPPs in the state in the future. He agreed that there were different components, but it had been his experience around the General Assembly that the simpler you can keep things the better off you are. Therefore, having one piece of legislation as a tool to draw from, rather than two, might be better.

Mr. Klein said in comparing the two pieces of legislation, he thought the delivery method issue raised by Ms. Rusher was real. He suggested allowing the other delivery methods to be part of the process rather than just saying design/build. Let the owners choose the process that they wish to use. If they are sophisticated and comfortable enough to use the design/build, allow them to use it. Our design/build legislation was workable; the biggest complaint they heard from the private sector about this bill was that it was a little too strict in **the way it operated** for developers. He said he favored combining the finance with the delivery methods and finding a median between too strict and too loose.

Representative Ross said she has heard an overall reservation about Senate Bill 822 as it was introduced. She said they have heard that several things should be put into consideration if any kind of design/build legislation moves forward. One is that it does not have any unsolicited bids, and secondly it should show consideration for North Carolina companies. If anything moves forward, she said the Commission must make a statement that those two things be incorporated into the bill or left out. The other thing she has heard from the stakeholders is that putting **any requirement of** money up front in order to even get into the process is a barrier to entry. She said she would put that on the list of something that would not be a good idea if any design/build legislation gets introduced.

Ms. Shealey said she would add to that list that any legislation should very clearly include the participation of local, small and minority contractors, and it should track similarly with the current legislation and goals the state has right now.

Chairman Jenkins said he hoped that if efforts are continued on this Commission that Commission members would be afforded some draft copies of the legislation so they could look at it and comment to be sure it covers the kinds of things that need to be covered. He said it bothered him that North Carolina is preparing to build a \$500 million bridge and not one of the three pre-approved contractors is from North Carolina.

Mr. Harry Kaplan from the audience was with McGuireWoods Consulting LLC, but he said he was not present for a client. He wanted to comment on the legislation because he helped to draft it. He said Senate Bill 822 did not include unsolicited bids and, therefore, upfront payments were not needed in there either. He said North Carolina has design/build; the Turnpike Authority has that authority, and local governments have periodically asked the General Assembly for local bills giving them permission to do design/build. He said Senate Bill 822 creates a streamlined process for situations coming up all the time. He said this bill is not mandatory. It is a voluntary process which involves a small minority of projects. He said the bill required that local governments or whoever applied to use this process had to have guidelines adopted, and those guidelines would have to address the issues that Ms. Shealey brought up. He said he was not saying the bill couldn't be improved, but all of the things mentioned were thought about in the process. He said many other states are using this tool, and North Carolina is falling behind.

Chairman Jenkins asked if someone wanted to make a motion.

Ms. Rusher moved that the Commission recommend taking a hard look at Senate Bill 822 to try to find the pieces of that **bill that** would permit a process in North Carolina that would add a tool to the toolbox, not just for schools but for a variety of capital projects that local governments have to undertake; and as part of that, to consider marrying it with provisions of **the capital lease** of school buildings legislation, which also has provisions in it including, in particular, the ability to do an operating lease so that the risk can be shifted to the private sector, in order to come up with something that would be a process that all local governments would have access to.

Co-Chairman Ross said the only friendly suggestion that she would make to the motion is that she would not marry the two. She would keep them as separate pieces of legislation because from what the Commission has been hearing, anything to do with **design/build** is going to have a rougher road, given what the Commission has heard from stakeholders in the process. She said she would hate to have the school bill, which we have now, get delayed by being put with the other legislation. She said it would be fine for the design/build to go forward with a lot of the caveats that the Commission put in, but she would hate to have it in the same bill.

Ms. Rusher said she could amend the motion to say that the Commission should look hard at the two separate pieces of legislation to see whether there are pieces of the capital lease legislation that might be useful to Senate Bill 822.

Chairman Jenkins said he had a question for the sponsor of the motion. In deference to Chairman Ross's suggestions about one piece of legislation holding down the other, his concern that was that they might get down the road and a bureaucrat might say someone had to meet both tests, when what they were trying to is make doing business easier in North Carolina. He wanted to be sure language in one did not restrict someone from doing the other.

Chairman Ross said that was a drafting issue.

Ms. Rusher restated the motion: Take Senate Bill 822 as written and dig into it, taking into consideration the comments the Commission has heard, to craft it into a bill that would permit some level of design/build for not just schools but a variety of public capital structures that would give clear guidelines for local units of government to work with, if they so chose, to build capital infrastructure. The motion was seconded by Mr. Copeland.

Chairman Jenkins asked Representative McGee how that motion sounded. Representative McGee said it sounded like they were going to craft a Senate Bill 822 to fit capital infrastructure needs. He said if it was all down **on paper** so it could be picked up by staff, then they could move forward.

Chairman Jenkins asked for staff comment.

Trina Griffin said any legislative member could certainly request a bill consistent with the recommendations of this Commission, and those recommendations would essentially form the report of the Commission; but obviously the Commission won't have an opportunity to vote on a piece of legislation since the Commission would expire on January 26, 2011.

The motion carried unanimously.

Chairman Jenkins recognized Ms. Mary Nash Rusher to begin the discussion of Financing Mechanisms.

Ms. Rusher said in talking about PPP, you come at it from two different angles. One is the procurement angle, and one is the finance angle. She said much of the conversation in the presentations to the Commission has been **about the PPPs that are essentially** allowing the private sector to build what ends up being public infrastructure. The other piece the Commission has heard about, particularly in the transportation world but also in other revenue-producing **assets**, is that a big part of what you want to do is shift the risk. But in shifting risk to the private sector, she said you need to shift a corresponding amount of benefit to the private sector. Ms. Rusher said that shifting is part of what all the statutory talk is about. Sometimes it will be a simple one-line statute, like with the Turnpike Authority. In other scenarios you'll see something much longer as in SB 822, and part of what the Commission will be looking at is how much risk you want to share; and, therefore how much more freedom do you want to give **the private sector** to build it the way they want to build it, etc.

Ms. Rusher said she tried to look at how to provide innovative financing **rather than just the procurement angle** ways to get dollars into the system, particularly in an environment where it is hard to get dollars into the system. She said some of these tools are tools that we have in North Carolina, so it may be just a question of getting the public sector more comfortable with them. A prime example is special assessment bonds.

Ms. Rusher said issuing special assessment bonds is where the private sector essentially volunteers to be assessed in return for the public sector being willing to provide some things in its geographic district that it won't have otherwise. It could be as simple as water pipes and roads, or it could be more innovative things such as a museum. In return for the public sector doing that, the private sector will agree to pay an assessment over and above their property taxes. The belief is that having the assets in place will cause all the property tax collections to go up because there will be more development in the area. What the General Assembly provided in 2008 was the ability to pledge those assessments to bond holders so local governments could issue bonds that were not based on the faith and credit of their town, county, or city but instead were supported only by the special assessments.

Those special assessment bonds have not yet been issued in this state, and Ms. Rusher said the primary reason is that the market for them, just like the market for tax increment bonds, is great big, sophisticated institutional buyers (typically mutual funds) that are in this business. In December of 2010, she said the Local Government Commission, with some restrictions, opened that market to North Carolina units of government **for special assessment bonds. The LGC** said if you have a project that was to be financed with either special assessments or a combination of special assessments plus tax increment financing, then we will let you go sell these to qualified institutional buyers. She said she is hopeful that the market will open up. She said across the country more than \$19 billion in development and infrastructure has been financed with that tool in the past ten years. It is probably used actively in 30 out of 50 states, and it is definitely a state-

by-state process. She said it is difficult to compare and contrast what happens in North Carolina and other states. She said people are always bringing up Texas and Florida because they have had some defaults, but both states have a process in place that allows those **small assessment districts** to be independent, stand-alone units of government, which is a vastly different thing than what we have in North Carolina. And, they don't have local government commissions in Texas and Florida, either, that require a land value to debt ratio that is extremely conservative.

She said **special assessment bond financing** is a tool in the tool box now, and there are some projects out there percolating. She hopes to see some of those come forward. Ms. Rusher said that legislation does not need to be changed. She said the LGC considered it long and hard and has looked at it, so to the extent that the Commission wants to encourage the use of a tool that exists, it could do that; but she didn't think it would require legislation.

Ms. Rusher said another thing that Chairman Ross asked her to talk about was infrastructure banks. She said North Carolina has infrastructure banks **although** they are not necessarily called that. "Infrastructure bank" is a generic term that applies to lots of different things, but in general it is a mechanism in which there is a pooling of funds that are then loaned to local governments **for specific uses**. The loans are not to the private sector, **although the private sector could be providing the funding by buying bonds**. She said the ones in North Carolina that we clearly have are two different revolving water funds. One is financed with EPA money that comes in from the federal government, and one is financed through state money. **That fund** is designed for places that have public health hazard water issues, and it is a revolving fund. It's like the old savings and loan. You lend to one, and as that money comes back in it is loaned to another. She said the state also has within the Department of Transportation a state infrastructure bank that finances local road projects with federal dollars that come in. **She said DOT has a process that requires matching money from the local government so they can leverage the federal money.**

Ms. Rusher said there are some states that have larger and broader infrastructure banks where they have a central repository that finances a broad range of infrastructure projects, again for local governments that come through this central **issuer**. Virginia has one called the Virginia Resources Authority that finances a broad range of resources, and it also has the Virginia Public School Authority. She said what both of those do, in part, is to pool. They permit a number of small, typically poor or lower credit-quality counties or cities who all need small amounts of infrastructure, that don't want a bond issue of their own, to join forces. They may want to pool because their credit quality is such that it is difficult to get into the bond market. It allows them to come together, pool **their needs**, and take advantage of a larger resource.

Ms. Rusher said that all sounds good, except you still have to solve the credit problem. The way the credit problem is solved in other states is through two particular mechanisms generally, although there are a few others. State Aid Intercept is a mechanism that says to the extent you as a local government are entitled to money from the state for a variety of things (such as schools), if you have issued bonds through our pool and you're not paying back to the pool your share, we are going to grab those dollars that the state would normally pay you and use those dollars to pay debt service. Because of that, the credit rating of those bonds are given a credit rating much closer to the state's credit rating because **it is** state dollars. She said she had no

idea if the Commission would want to go down that road. She said she was just explaining how it works.

The other way a number of these infrastructure banks work, either the state does the borrowing and then lends the money down **to the local government, who must pay the state back**, with the state's credit on the line; or the state will stand behind the bonds, usually through a debt-service reserve fund. So you would have a debt-service reserve fund that is filled at the outset, usually by an appropriation from the state, and if the local governments can't pay the bonds back and they have to tap into that debt-service reserve fund, the state agrees on a non-appropriation basis to fill it back up.

Ms. Rusher said she was not sure that any of those suggestions have any merit in a year, or five years, in which the state has such a credit crisis. She said she was just explaining how they work. She said to the extent you could find pots of money to provide the seed money to start the process of revolving funds, it might be worth talking about. She said since Chairman Ross asked her to explain infrastructure banks, she was just giving the broad parameters of how they work.

Chairman Jenkins thanked Ms. Rusher and turned the meeting over to Chairman Ross so he could leave to attend another meeting.

Chairman Ross said the Commission had asked the Treasurer's Office to come up with some ideas on financing mechanisms. She said their report was the handout entitled, "Public-Private Partnership Financing Examples in North Carolina." A copy of the report is available in the 1-25-2011 folder at the Commission's website:

<http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>

Chairman Ross said what the Treasurer's Office did was give examples of mechanisms that North Carolina currently has, and then at the end, on page 4, they state that they don't have any other ideas for the Commission. She opened the discussion to Commission members for their ideas and said she would ask the staff to report following the Commission's discussion.

Representative McGee asked Ms. Rusher if there were 30 states that have the infrastructure bank. Ms. Rushers said no, there were 30 states that have used special assessment bonds. Chairman Ross added that North Carolina does have special assessment bonds, but they have not been used yet. Now that there are Local Government Commission guidelines, she was hopeful the bonds will get used.

Representative McGee asked how many states are involved with infrastructure banking. Ms. Rusher said probably forty states have the infrastructure bank for road projects, and that is because the Federal Department of Transportation sort of served that up on a platter and said, "We'll give you this money, but we sure want you to put these processes in places." Ms. Rusher said in some areas, like North Carolina, there have been a couple of deals done with them, and in other states they've had fifty deals done with them. She said in nearly every state the infrastructure bank is not a single entity that covers everything; there will be one for roads, one for museums, one for a stadium, some for schools, some just for charter schools, etc. She said

North Carolina is not unusual for not having an infrastructure bank that covers anything that someone might want to do. She said California has an over-arching entity that does a little bit of everything, but in most states the **infrastructure bank** is much more driven by the end use.

Representative McGee asked if other states had plans for this kind of thing. Ms. Rusher said she has read things, but she has not done in-depth research. She has read that Illinois has done some huge transportation deals.

Representative McGee said it is his understanding the monies **for PPP projects** come from private investors and sometimes from the federal government, but the state is on the hook for repayment of these private investment funds. Ms. Rusher said they are usually on the hook in terms of either a lease fee or an availability fee, or usage, so from their perspective it is an operating expense. It is something they budget for every year. It is the private sector that goes out and gets the financing, is responsible for the maintenance, and is responsible for building it in a way that meets government's specs. Certainly they wouldn't do the deal if the state didn't say, "We want this road, and we'll pay you for this road over time if you'll put it in place."

Chairman Ross asked Mr. Mark Bondo from the Commission's staff to come forward with his report.

Mr. Bondo said he was asked to look at any other types of financing mechanisms or procurement mechanisms that exist elsewhere in the country that maybe the Commission had not heard about. In doing that, he said staff spoke with members from the School of Government at the University of North Carolina at Chapel Hill and also looked on their own.

The advice and research showed that the Commission had hit most of the bond mechanisms that could be used in financing public-private partnerships. The one area they were advised to look at that the Commission had not looked at was the state infrastructure bank or the use of tax credits or tax mechanisms that would make things more viable.

Mr. Bondo said the one piece of advice they got, and what the literature showed, is that perhaps sometimes people like to look at an individual public-private partnership (PPP) and see the particular mechanisms that made that specific deal viable. So if a PPP included equity from both parties, a TIFIA loan from the federal government, and those sorts of those things, then that's the model that should be used for all PPPs and transportation. Typically the one caution is that PPPs are deal specific and recommending a specific type of mechanism for all PPPs would only allow you to get the PPP that you just did. Being broad is a better mechanism to accomplish your goals.

Ms. Shealey asked if the concept of the state infrastructure bank as used in Georgia embraced the pooling of investment-grade projects that you can take out to the market to raise the dollars and then allocate those funds to the various entities, whether education or municipalities, without structuring the exact process for the entity's transaction.

Mr. Bondo said he was not familiar with Georgia, but he was familiar with Virginia's Resources Authority, which is a pooled infrastructure bank. He said the way that works is there

are many local governments that are not big enough to access capital markets. Either the project is not big enough to attract any appetite or maybe they are not investment grade. So they get together with other local governments and pool their small projects together for perhaps a \$500 million offering. Once that is sold, it is allocated to the local governments and the local governments would then pay their portion back.

Ms. Rusher said to be clear, part of what makes that work is the state stands behind it. The smaller entities that normally could not access capital or would have to be accessing it at a higher rate, pool together and the state stands behind them. It is not just the pooling. North Carolina can do pooling and already does under existing statutes. She said it would be great, however, to have a very straight forward mechanism in the statute for pooling rather than having to cobble it together and create non-profit entities that are pass-throughs. Often in other states what makes it work is either the intercept mechanism, or the state standing behind it, or both.

Representative McGee asked if there are dollars sitting in an account somewhere waiting for somebody to call up and say, "Send us some money." Ms. Rusher said, no. Particularly in the capital markets, it is not going to a bank for money but trying to access the broader capital marketplace that buys tax exempt bonds, for example. It is just hard to get that market's attention for something as small as a \$1.5 million to \$2.5 million project. But if you could put a whole lot of those together and bump up the credit quality, all of a sudden you might get ten smaller units that each need \$2 million for a total of \$20 million. Ms. Rusher said a \$20 million issue will get someone's attention.

Representative McGee asked if that were a pooling of the debt requests, and Ms. Rusher said that was correct. Chairman Ross said you pool the debt requests, and then they share the money when they have the bigger issue.

Representative McGee asked who does the pooling of the various requests. Ms. Rusher said there was no question that it required a staff. She said the Virginia model has two cycles, two sets of applications, application deadlines, criteria to meet, etc. They pool the requests together and go out to the markets; and once the bonds are issued, the dollars are parceled out to the different units to spend. And they each have a repayment obligation (note) that they have to pay back.

Chairman Ross said she wanted to see how the Commission felt about the infrastructure bank idea. She said it seems to be the only tool identified that would get some additional money. It also seems that if it is focused on some of North Carolina's smaller counties and cities, which don't have the money to borrow on their own, it can get some important projects done. She said some of those counties and cities might be in rural areas that need jobs, and that money could trickle down and create jobs because they would be smaller projects rather than huge projects. While it might not solve all of the state's infrastructure needs, it might solve some smaller ones and do it in a way that spreads things out around the state. She asked if Commission members saw that as something worth exploring in North Carolina.

Regarding the concept of the state infrastructure bank, Ms. Shealey asked if the state infrastructure bank would become the agency or the entity to create the pool to go out into the

bond community to generate the private dollars for funneling back to the different entities. Chairman Ross said it could or it couldn't. She said the question is does this Commission think we should investigate doing this and start getting some work done to see how it could be accomplished in North Carolina. If so, then it would be on the table.

Representative Carney asked for clarification. She said that Ms. Rusher said there are other states that have infrastructure banks, and we have some here. She asked if the idea was to take the ones that already exist and place them under one umbrella. Ms. Rusher said no; those mentioned are the type where there is, in fact, a pool of money. There are legislative dollars that get appropriated and they need to be spread out, or loaned out, or leveraged. She said that is different from creating an authority that is trying to provide access to capital.

Chairman Ross said this would be a new pool, and the legislation would have to define who would be eligible to get money from the pool. Because it wouldn't be a huge amount of money, the idea could be that it could be something that could be more helpful for some of the state's smaller counties that have a more difficult time getting credit. She said she represents Wake County, but she didn't know that they needed an infrastructure pool to do their infrastructure. This would be a way to help rural counties or counties who have higher property taxes and may not be able to raise their property taxes to pay for things. It would give them more access to capital, so they could do some of the smaller projects they need to do.

Representative Carney asked if this was an investment on the state's part, and Chairman Ross said she had no idea, but she wanted to know whether the Commission thought it was worth exploring as part of their charge or recommending that it's a good thing to do. She said there is no answer yet. The question is whether to explore this as a way to get more projects out there that could be done in different areas of the state.

Representative Carney said this has come up in different aspects in several different committees she has served on over the past several years. Therefore, she thought there was merit in at least looking at this idea to see what it would look like if it were developed for North Carolina.

Representative McGee asked whether the North Carolina County Commissioners Association or the North Carolina League of Municipalities had been aware of this or had any input into this idea.

Ms. Rusher said she didn't want to speak for either of those organizations, but she said she had had conversations with both of them, and they had talked about putting together some pooling structures in the more awkward way where you ask the County Commissioners Association to be a non-profit conduit issuer.

Chairman Ross asked whether anyone in the audience had a perspective on this.

Mr. Ben Matthews with School Support, DPI, said they attempted this with the qualified school construction bonds, which were a federal low-interest or no-interest program. He said they got hundreds of millions of dollars and put it out to all the districts. He said they had a lot of

small counties who got relatively small amounts. He said these counties had to go out and sell bonds in amounts of \$1million, \$2 million, or \$3million. He said DPI was on the periphery of this, advocating for it, because they thought it would be a great idea if they could pool many small counties. In fact, they even advocated to the State Treasurer for doing it for the entire state because there were some states that did this. He said it could have been really helpful to the small districts if they could make it work. He said they had certainly been thinking about this and certainly saw the value of it.

Representative Tolson said it sounded like this had enough merit for the Commission to move forward with it. He suggested putting together some structure, listing the pros and cons and then getting some feedback to see where it might go. If this Commission moves forward, he thought it was something they certainly should explore. He said they could give people an opportunity to **nitpick** it or take pot shots; and if it would work, they could give governments something they could use.

Ms. Shealey said she agreed that it merits further exploration, and she would hope that it would not just be limited to small localities. She hoped it could be considered for higher education or **K-12**, and that the Commission would have a broad perspective about how this tool might potentially be used.

Chairman Ross said the only thing that could limit it would be how much money is in it. She said if it is a small amount of money, then you do a greater good for a greater number if you have the smaller localities in there.

Chairman Ross said she wanted to throw out another idea that she thought the public members would be okay with, but she wanted to see what the legislators thought. She said there is not General Fund money to do this, and the Clean Management Trust Fund is an example of something like this where there is General Fund money. In fact, the Housing Trust Fund is an example where there is some General Fund money. She said what has consistently been discussed by the Clean Water Management Trust Fund, the Housing Trust Fund and other infrastructure groups, is whether to get this money from some fee-based system as opposed to fighting to get money from the General Fund each year. If it were a fee-based system that was separate from the budgeting process, then it would generate whatever fees it does from whatever those sources are. Of course, nobody likes fees, but if you make the fees on people who see that they will benefit from them, sometimes they come to the table. She said she wanted to throw that out there because you can come up with the perfect infrastructure bank, but if there is no money to put in it, then you can't do it.

Representative McGee said you don't have a big pool of money. You have an agency that would have to have expenses paid, and as they accumulate these bids coming in for money that counties need, then they would be marketed in a larger pool. The pool is not there in this particular case of raising private money. It's not there until you accumulate all the bonds, and then you go to the market and try to sell the bonds. The expense to the agency would be the administration expense, the salaries, etc.

Ms. Rusher said there are actually two different models. There's the infrastructure bank in which there is money, and that money is then loaned out; and there is the infrastructure bank in which there is a pooling mechanism. In many states, she said it is the same entity; they have pooling programs, and they have the loan program, and they have revolving loan programs. That's why she said saying infrastructure bank is like saying PPP. You have to decide which program you are talking about. She said Chairman Ross may be talking about a program in which the fees become the dollars that get loaned out to everyone. She said there are lots of nuances.

Chairman Ross said we need more capital, we need more tools, and infrastructure banks provide both of these kinds of things. She said we do have some models for something that is a little bit of an infrastructure bank with the Clean Water Management Trust Fund and the Housing Trust Fund. And, we have it in Transportation. She said the question is whether to put this idea on the table and include potentially looking at a fee-based system.

Representing Tolson asked if Ms. Rusher were advocating doing both concepts under one entity. Ms. Rusher said she was not sure she was advocating anything, but she said she would like for both of the concepts to be on the table. She said there was some logic in having them be a single entity because they might have similar application processes.

Representative Tolson said he thought there was agreement that they should put something together with both concepts in mind and see what kind of reaction they get from it.

Ms. Carmon asked if there were a fee-based model out there to look at.

Ms. Rusher said in a number of the models, often they are borrowing at the state's cost of funds, and they lend it a little higher. The fee is often built into the borrowing cost in the pooling model.

Chairman Ross said when she said fee-based, she meant do we want to put a percentage of tax on something and have that money dedicated to create a revolving loan fund within the state. Taxes are sometimes called fees. **For example**, in order to do the beach plan, they put a fee on insurance companies to be able to pool risk. She said they do that all the time. The question is, is creating a pot of money worth using the T word?

Representative McGee said the difference in what they have to pay to get this done versus them going into a pool would be enough that they could pay some fees because the cost to them is probably 8.5 or 9 percent. If they were joining a pool they could probably do it because the state's guaranteeing interest at 4 percent.

Ms. Rusher said she **had misunderstood** what Chairman Ross was talking about. Her thinking was a fee in order to participate. What she was now hearing is that if they were talking about water, everyone would, for example, get an extra two cents in their water bill every month and that could be used to create the fund.

Chairman Ross said she was not saying that would be the way to do it, but the folks who advocate for the Clean Water Management Trust Fund and the Housing Trust Fund and some other of our infrastructure-based small funds, have in the past talked about whether there could be a dedicated source of revenue that would support what they do.

Representative Carney said she thought there was enough interest and need for the Commission to make a recommendation.

Chairman Ross said the motion would be that **this Commission recommends doing some intense looking at how to set up an infrastructure bank that would include both better ways to do pooling and a potential revenue stream to create a revolving loan fund.**

Representative Carney said if this Commission ends, there should be legislation drawn to get it done.

Chairman Ross said one of two things could happen. Either legislation could get proposed by the legislative members of the Commission, or there could be a study between the long session and the short session so the big work could be done. She said it would be Finance-oriented legislation, so going through Finance might be a good way to do it.

Chairman Ross said the above motion would be called the Tolson-Carney motion and she asked if there was further debate. There being none a vote was taken and the motion passed unanimously.

Ms. Carmon asked that for clarification the Commission go back to tax credits and the comment from the School of Government.

The chair asked Mr. Bondo to answer.

Mr. Bondo said they didn't get a chance to dig too deeply into that subject; but piggybacking on Ms. Rusher's comments, the idea is that if there are tax credits available that a public entity could not take advantage of because they are not paying taxes, then a deal should be structured in such a way that the private entity could take advantage of those tax credits.

Chairman Ross said some examples of those are solar tax credits and historic tax credits.

Ms. Carmon said they were not talking about creating additional tax credits but utilizing the ones available.

Chairman Ross said that was right. And in some of those deals it is hard to structure them so that the private entity can use the tax credits.

Ms. Rusher said that was correct. Most of the time tax credits come through ownership of the thing that has been built and, therefore, the private sector has to own the thing in order to take the tax credit.

Chairman Ross said for historic tax credits, because the state owns a number of historic buildings on Blount Street, and the state has no money to fix them up because it costs more to fix up a historic building than a regular building, which is why we have tax credits; the state decided to transfer the ownership of those buildings to a private developer with a lot of restrictions on how they could be used so that those buildings could be better used and maintained because the private folks could use the tax credit. She said selling it was an extreme fix. She asked if there were other ways of allowing someone to take advantage of the tax credit.

Mr. Bondo said one of the issues with the school legislation was you couldn't take depreciation because it was a capital lease as opposed to another type of lease.

Chairman Ross said the Commission had gone through the topics assigned to it. She said she had asked staff come up with a list of the important issues to consider for future legislation, and that was included in the last handout, which includes the headings *Currently Authorized Financing Mechanisms in North Carolina* and *Issues to Consider for Future Legislation*. She said staff went back to Rich Little's presentation at the very beginning of their meetings, and they came up with questions. She asked the Commission whether they wanted to go through the questions and try to answer them today or defer them to the next Commission and leave their work with what they had done so far today.

Representative Carney said she thought it would be advantageous to go through the questions because if the Commission moved forward it would be good to have some overall general comments, especially from the private sector, but not an in-depth line-by-line discussion.

Chairman Ross said they would go through the questions fairly quickly to see if anyone had comments for the record.

What is the primary goal behind encouraging greater use of public-private partnerships?

- **Faster project delivery?**
- **Reduced cost?**
- **Sharing of risk?**
- **Additional financing methods?**

Ms. Shealey said all of the above had significance, but a priority would be for an additional financing stream of revenue in order to accomplish some of these projects.

Chairman Ross said they had heard from some folks that reduced costs does not always come through.

Representative Carney said faster project delivery is what legislators hear all the time, especially when it comes to transportation.

Mr. Vick said he agreed that additional financing methods would be first and faster project delivery would be second in the goals. There was committee consensus.

Should potential legislation be limited to specific agencies or should it be broad granting authority?

Mr. Klein said the broader the better so it is available to all of the entities, and that was the consensus.

Should PPP projects be limited to “Greenfield” or “Brownfield?”

Ms. Rusher said in the spirit of trying to provide flexibility, creativity, and innovation she would not limit what they could do. There was consensus with the Commission.

Should potential legislation authorize the creation of additional revenue streams?

Chairman Ross said that was discussed and the answer is yes based on the Tolson/Carney motion.

Should a private entity be required to contribute a portion of the funds required to complete the project?

Chairman Ross said this came up with the discussion of the Mid-Currituck Bridge and some other things.

Mr. Klein said he would not restrict it. It should be a decision made on each deal as it is being proposed. It might work well for some developers to provide land at a better price than what local governments could buy it for outright.

Chairman Ross said she was hearing let's make it deal specific rather than have a general requirement. There was no dissent.

Who should have control over increases or decreases in the revenue stream?

Chairman Ross said this came up with the issue of tolls and water rates.

Ms. Rusher said along the risk-shifting theme, the more risk you try to shift to the private entity, the more control they have to have. She said she was not sure they were crafting legislation that is going to be designed for many revenue-producing enterprises. She said she would not want to limit it, but she wasn't sure this concept would fit much if they were talking about a true infrastructure like schools or social infrastructure. She didn't know how they would address it or if they should even try.

Mr. Klein said in the case of student housing there would be a question of who should set the rates.

The chair said the bigger question was should there be a general principle? Should the public entity do it, or should the private entity do it, or should it be deal specific?

Ms. Rusher said perhaps it should be one of the things that you require be addressed. Mr. Klein agreed.

Representative McGee said shouldn't the person with the risk control that?

Chairman Ross said that could be the way it is, but if the Commission thinks in general that private people shouldn't be setting water rates or tolls, should there be a public policy principle on that? Do we want that public policy principle to just be based on assumption of risk or should it be based on a broader duty to the public for the public entity making the deal? That, she said, is the bigger, more policy oriented, question.

It was the consensus of the Commission that it to be specifically and thoughtfully addressed and be an aspect of the deal as opposed to the Commission saying it had to be one way or the other.

Should there be a profit-sharing agreement?

It was the consensus of the Commission that it should also be specifically and thoughtfully addressed and be an aspect of the particular deal.

How should any potential impact on the State's debt capacity and credit rating be considered?

Chairman Ross said it was a big question. She asked if it should be left to the LGC or Treasurer's Office. She said it might be a good question to kick over to the next Commission. There were no comments.

Should a private entity have to pay to bid?

Representative Ross said when they had a discussion of SB 822, there was a disinclination to have payment to bid.

Representative McGee asked if at the present time there were not entities that require private entities to submit money with the bid that they submit.

Ms. Rusher said what was universally rejected was the concept of unsolicited bids, which required entities to submit money with their unsolicited bids to cover the cost of the local government considering their unsolicited proposal. She said she didn't think the Commission wanted a barrier that would keep small contractors out of the normal bidding process.

Mr. Copeland said the Commission talked a lot about not minimizing or eliminating all firms from competing, and when those fees get really large, it means that only large firms can afford to enter the game. He didn't think the Commission wanted to go that route.

Mr. Klein said when there is a solicited proposal, the entity is prepared to review the bids.

Mr. Vick said he agreed that when there is a solicited proposal, he didn't think anyone should have to pay to provide a proposal under any kind of methodology out there.

Ms. Shealey said it was about not creating a barrier to participation, and when you charge a fee it does create a barrier.

Based on discussion, it was the consensus of the Commission to not charge a fee to bid.

Representative McGee said these were issues to consider for future legislation, and when saying no, he wanted to be sure it was not being taken off the table for discussion.

What is the best way to balance the need for open competition and the value of participation by local, small, minority, and women-owned businesses with the benefits of increased flexibility and time savings?

Chairman Ross asked if there were any important things that people thought should be in this Commission's deliberations about that.

Mr. Klein said he thought a lot about the idea of disclosure of the goals on participation and disclosure on competition as opposed to a certain mandate. When someone has to disclose their bids and disclose to the entity, he thought it produced some trust in that showing to the entity as opposed to some mandate as to how you go about bidding your projects. He thought there needed to be something that would ensure competition either through a disclosure to the entity of all the information in an open book fashion as opposed to a public open bid held. He said he wanted to ensure competition, but he said maybe it is a disclosure issue depending on the contracting method used by the private entity.

Ms. Shealey said there were different components here: open competition and the value of participation. She said she was not sure the Commission could answer that question in terms of giving the best practice, but the approach to that in terms of transparency and guidelines of inclusion should be a part of anything the Commission does. She said she thought the Commission wanted to recognize that all of this drives toward creating jobs, and the best level of creating jobs is with small, local, and minority companies. She said this warrants and merits further discussion about better practices than what we are already doing at the local level.

Should public-private partnerships authorized by any potential legislation be subject to public bidding laws?

Mr. Vick said his company was very supportive of public bidding laws and openness and transparency. He said they did recognize that in certain processes like design/build there will be more than just a low-bid component; there is going to be a proposal, a quality score, a methodology on how it is scored, how it is compared and a system where you get to the best qualified proposer. He said they didn't have a problem with design/build and that kind of methodology, but it needed to be spelled out ahead of time so everybody understands exactly how it works. He said when everyone understands the system, they seem much more willing to participate, so it should be concise, clear cut, and transparent.

Ms. Shealey said she agreed with Mr. Vick, and she thought a qualification-based process would be an appropriate fit here. She said although you want to get value, the lowest bid is not always the best return in this economic environment.

What type of oversight should there be for public-private partnerships? Should it just be based on the legislation? Is the LGC enough? Should there be any additional type of oversight? Do we have too much oversight?

Ms. Carmon said for a couple of local public-private partnerships that they have in Winston-Salem, they actually have a city board overseeing the PPP and how that particular entity is operating.

Ms. Rusher said they were trying to build in flexibility, but in SB 822 there is a requirement that if a local entity wants to do this kind of a project, they must develop guidelines. She said the Commission might want to tell them the things they must address in those guidelines, and this would be one of them. One city might want to have a city oversight committee that includes members of the public; another might want it to be a subcommittee of the city council; another might want someone from the state to help them. She said she didn't want to dictate how they do it, but she wanted to be sure these things are thought about in the process of setting up their program.

Should potential legislation require public-private partnership contracts to include provisions providing for additional transparency beyond what would be required by the Public Records Act?

Ms. Heather Fennell from staff said this is part of the Virginia legislation where in the guidelines it has specific guidelines for what is public.

Mr. Klein said Virginia doesn't have a local government commission so they don't have the authority to oversee the financial wellbeing of the individual counties and municipalities like North Carolina does. He thought the public entity ought to determine the degree of transparency they want to see.

Should public-private partnerships be subject to public comment, citizen review panels, or other forms of citizen input and engagement?

Ms. Carmon said she didn't think it should be required, but it was something that certainly should be considered. For her municipality there's been a system review panel for the few PPPs that they have done, but it may not be beneficial for other municipalities.

It was the consensus of the group that it was something that should be required but not mandated.

Should there be performance goals?

The consensus was yes.

Should a separate office or agency provide oversight of all Public Private Partnerships.

This was covered at the bottom of page 18.

What agency or office should be responsible for monitoring the oversight of Public Private Partnerships?

Representative Ross said we do have the Local Government Commission, so she asked Commission members if there were anyone else they thought should pay attention to public-private partnerships other than the Local Government Commission.

Ms. Rusher said there are other agencies that will be involved. The Office of State Construction will be involved, and for roads the DOT will be involved. She said that oversight process is already there, and the Commission did not need to create any.

Chairman Ross said the questions were put together by staff in trying to pull together the big issues. She asked if there were any questions or items that were not on the list that members thought were important to be in the minutes. She said the minutes would be the jumping off point for whatever happens and also the jumping off point for any legislation that the members of this Commission might introduce and carry forward.

Ms. Carmon said for local projects in Winston-Salem they have used the Downtown Development Projects statute, which is G.S. 160A-458.3. She said she would like to have that as part of the package of items to be considered for possible tools or possible pieces of legislation. She said there are some components of that statute that are helpful.

Chairman Ross thanked Ms. Carmon for bringing that up. She said the City of Raleigh has used it as well, and it has been very beneficial in areas of Raleigh.

Mr. Klein said the need for clarification of the allocation of sales tax rebates, which the private sector might be entitled to, and the definition of “off-book financing” were issues that he had encountered while working on PPPs.

Ms. Rusher said there is a drafting issue in the statute where school boards don’t get the sales tax exemption but counties do. Chairman Ross said that has been an issue not because of the policy but because of the fiscal implications. Ms. Rusher said most schools have found a way around it by transferring their schools to the counties. She said if you are going to solve it for private entities that own the schools, **we should** solve it for school boards that own the schools, too. Representative Ross said that could be put on the table for the Revenue Laws Commission.

Mr. Klein said another issue that came up in dealing with operating expenses to school systems was the amount charged to schools that was also applied to the capital side, so when compared to what the LGC said about being “equal to or within the range of costs” that percentage point automatically made the deal from a financial perspective look like it cost more

to everybody. Certain percentage points were added to it when otherwise you wouldn't see that, thus affecting the attractiveness of the financial aspects of capital leases. He thought the issue should be tackled so it was not a hindrance to boards of education. Chairman Ross said that might also be kicked to the Revenue Laws Commission.

Chairman Ross asked for a motion that this Commission continue to go forward in some way, shape or form either during the Session or in the Studies Bill.

Representative Carney so moved, and Representative Tolson seconded the motion. The motion carried unanimously.

Chairman Ross thanked the Commission for its work and for the members' attendance. She said it had created a good record and list of recommendations for the Legislature in the short period of time it had to meet. She said she hoped the public members would get involved as legislation is introduced, and she hoped they would be reappointed if the Commission continues.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Senator Clark Jenkins, Co-Chair

Representative Deborah Ross, Co-Chair

Margie Penven, Committee Assistant